



1 Circuit Court of Appeals affirmed the district court's decision. (*See* Order in *Weaver v.*  
2 *Alameida*, No. 06-55501 (9th Cir. May 16, 2007) [ECF No. 36].)

3 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**

4 Petitioner is now seeking to challenge the same conviction he challenged in his prior  
5 federal habeas petition. Unless a petitioner shows he or she has obtained an order from the  
6 appropriate court of appeals authorizing the district court to consider a successive petition, the  
7 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b); *Murray v. Greiner*, 394  
8 F.3d 78 (2d Cir. 2005) (holding that dismissal for failure to comply with one-year statute of  
9 limitations renders subsequent petitions challenging the same conviction or sentence "second  
10 or successive" under 2244(b)); *Reyes v. Vaughn*, 276 F.Supp.2d 1027, 1029 (C. D. Cal. 2003)  
11 (same). Here, there is no indication the Ninth Circuit Court of Appeals has granted Petitioner  
12 leave to file a successive petition.

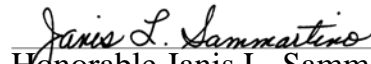
13 **CONCLUSION**

14 Because there is no indication Petitioner has obtained permission from the Ninth Circuit  
15 Court of Appeals to file a successive petition, this Court cannot consider his Petition.  
16 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition  
17 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals.  
18 (Attached for Petitioner's convenience is a blank Ninth Circuit Application for Leave to File  
19 Second or Successive Petition.)

20 The Clerk shall close the file.

21 **IT IS SO ORDERED.**

22  
23 DATED: December 6, 2011

24   
25 Honorable Janis L. Sammartino  
26 United States District Judge  
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